IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.4507 OF 2004
IN
FIRST APPEAL NO.1452 OF 2004

Rahul S. Mishrikotkar, .. Applicants
Vs
Union of India & Ors. .. Respondents.

WITH

CIVIL APPLICATION NO.4508 OF 2004
IN
FIRST APPEAL NO.1453 OF 2004

Sunanda S. Mishrikotkar, .. Applicants.
Vs
Union of India & Ors. .. Respondents.

Mr. Ashok Singh, Sonali Kunekar i/b M/s Haresh Mehta & Co, for the applicants/appellants.
Mr Rajiv Chavan with Mr D.A.Dubey for respondents-Union of India & Enforcement Directorate.

CORAM : S.B.MHASE &
D.B.BHOSALE, JJ.

DATE : JANUARY 31, 2005.

P.C.

1. In so far as these civil applications are concerned, heard both sides.

2. The order under challenge is the order dated 18.8.2004 passed by the Appellate Tribunal in Appeal Nos.187 of 2004 and 188 of 2004 passed by the Acting Chairperson of the Appellate Tribunal for Foreign Exchange, New Delhi. The said appeals were against the order passed by the Deputy Director, Enforcement Directorate, Mumbai. The Deputy Director of Directorate of Enforcement, Mumbai has imposed a

penalty of Rs.10,00,000/- against appellant Rahul Mishrikotkar, for contravention of section 9(1)(d) of Foreign Exchange Regulation Act, 1973 to the extent of Rs.38,77,500/- and a penalty of Rs.5,00,000/- against appellant Smt Sunnanda S. Mishrikotkar for contravention of section 9(1)(d) of Foreign Exchange Regulation Act, 1973, to the extent of Rs.19,80,000/-.

3. The amounts of Rs.38,77,500/- and 19,80,000/- were received by Rahul Mishrikotkar and Sunnanda S. Mishrikotkar. As these amounts were received without necessary permission from the Reserve Bank of India the proceedings under section 9 were initiated for violation of section 9(1)(d) of the Foreign Exchange Regulation Act,1973.

4. Section 9 provides that save as may be provided in and in accordance with any general or special exemption from the provisions of this sub-section which may be granted conditionally or unconditionally by the Reserve Bank, no person in, or resident in, India shall .... (d) make any payment to, or for the credit of, any person by order or on behalf of any person resident outside India.

5. The learned counsel for the applicants submits that the allegation of the department is that the applicants have received this amount so as to make any payment of premium to certain persons in India. He submitted that this was a transaction because of love and affection between the NRI and the applicants. In order to test the submission of the learned counsel for the applicants, we asked the learned counsel what is the relation either blood or otherwise of the said NRI with the present applicants. The learned counsel submitted that there was no relation either side with the said NRI.

6. We further asked whether in order to develop love and affection for the applicants, at any point of time, the applicants and the NRI have come together either in India or outside India so that love and affection could develop amongst them so as to have transaction of such huge amount with the applicants. The learned counsel for the applicants was not in a position to explain and state as to whether such love and affection was developed amongst the applicants and the NRI. Above all, the Department is asking and we also asked the learned counsel as to how the amounts which have been received, have been utilised by them. They were unable to explain the same. The

learned counsel for the Union of India Mr Chouhan makes a statement that the said amounts have been disbursed to an unknown person in India. We also asked the learned counsel for the applicants, can you explain to whom and in what capacity the amounts are disbursed to the known or unknown person, he was unable to explain. All these facts disclosed that this was a system operated to avoid the provisions of law and this is an inflow of NRI money in country to satisfy the debts of persons whose names are not required to be disclosed. The whole transaction, prima facie, appears to be fishy one and against the provisions of law and, therefore, we are not inclined to grant a blanket stay in the matter.

7. At this stage, the learned counsel for the applicants submitted that the amount may be reduced to 25 percent of the penalty. We do not accept the said submission. We cannot forget that this was the money which the Union Government could have utilised for rendering better services to the citizens in the country and, therefore, if we try to protect such a transaction, it indirectly gives encouragement for such activity and, therefore, we are not in favour of accepting the said submission. We therefore pass the following order:

(a) The applicants are hereby directed to deposit the amount of Rs.10,00,000 and Rs.5,00,000/- respectively in this Court within a period of four weeks from today.

(b) When we passed this order, the learned counsel for the applicants, submitted that eight weeks time may be granted. We are also not in agreement with the learned counsel for the applicants because initially the time to deposit the amount was granted for sixty days from the date of the order and the impugned order has been passed on 18.8.2004. For a pretty long period, appeals were not taken for admission and when it is found that this court is not inclined to grant stay and time, an attempt is made to get further time to deposit the amount. Since prima facie we have noticed that the transaction is absolutely against the provisions of law and requires to be curbed with a stern action of this Court, we refuse to grant time as prayed for.

(c) We further make it clear that if the amount is not deposited as directed by us within the stipulated period, it is open for the respondents to execute the said order.

(d) The civil applications are disposed of.

(D.B.BHOSALE, J.) **(S.B.MHASE, J.)**

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